THE HONOURABLE SRI JUSTICE J. CHELAMESWAR

AND

THE HONOURABLE SRI JUSTICE D. APPA RAO

W.P. No. 9783 of 2006

O R D E R (Per Hon'ble Sri Justice J. Chelameswar)

Challenging the order of detention, dated 20.03.2006, passed by the 1st respondent herein, directing that Sri Pralayakaveri Narasimham, one of his friends filed the present writ petition seeking a writ of Habeas Corpus.

In the detention order, it is stated as follows:-

IN THE COURTOF THE COLLECTOR & DISTRICT MAGISTRATE, NELLORE

PRESENT: SRI M. RAVICHANDRA, I.A.S

Rc. C1(M) 371/2006 Dated: 20.03.2006

ORDER OF DETENTION UNDER SECTION 3(1), 3(2) read with Section 2 (a) and 2(g) OF THE A.P. PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG OFFENDERS, GOONDEAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986 (Act no.1 OF 1986)

1. Whereas, The Superintending of Police, Nellore has laid before me the information regarding the spate of criminal and dangerous activities and acts of violence disturbing public peace and tranquility by Sri Pralayakaveri Narasimham @ Naxalite Narasimham s/o Ankaiah, aged 60 years, resident of Pedapattapupalem H/o Chennayapalem village, Kavali Mandal and Nellore District for two times causing breach of public peace and creating insecurity among the inhabitants of the village, as he is habituated to persistently continuing criminal activities and is a source of potential danger to the public well being as his activities are prejudicial to the maintenance of public order.,

2. Whereas the information provided revealed that the activities of Sri Pralayakaveri Narasimham @ Naxalsite Narasimham s/o Ankaiah, aged 60 years, resident of Pedapattapupalem H/o Chennayapalem village, Kavali Mandal and Nellore District fall u/s 2 (g) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoit, Drug-offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act No.1 of 1986) and as the offences are in Chapter XVI and XVII of IPC as defined under Section 2(g) of the said Act as the offences of the same nature committed repeatedly proves that he is habitual offender.

3. Whereas the offences are not mere clashes, but organized ones involving substantial number of criminals in an organized fashion.

4. Whereas the information provided reveals that if he is allowed to be free in the general public. He will instigate other persons to turn as habitual offenders

causing damage to public order.

5. Therefore, I, Sri M.Ravichandra, I.A.S. Collector & District Magistrate, Nellore in exercise of the powers conferred upon me under sub-section (2) of Section 3 of the said Act (Act No.1 of 1986); and in G.O.Rt.No.8011, General Administration (L&O-II) Department, dated 1.12.2005 do hereby direct under sub-section (1) of Section 3 of the said Act (Act No.1 of 1986) that Sri Pralayakaveri Narasimham @ Naxalite Narasimham s/o Ankaiah, aged 60 years, resident of Pedapattapupaloem H/o Chennayapalem village, Kavali Mandal and Nellore District shall be detained in Central Prison, Nelloore immediately for a period of three months from the date of taking him into custody.

6. The grounds of detention in Telugu and English and the material in support thereof are sent herewith to Sri Pralayakaveri Narasimham @ Naxalite Narasimham s/o Ankaiah, aged 60 years, resident of Pedapattapupalem H/o Chennayapalem village, Kavali Mandal and Nellore District.

7. He has a right to make representation to the detaining authority i.e. Collector & District Magistrate, Nellore, Advisory Board and the Government against his detention as per the provision made u/s 8 (1) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act No.1 of 1986)

8. The Superintendent of police, Nellore is requested to take the detenu Sri Pralayakaveri Narasimham @ Naxalite Narasimham s/o Ankaiah, aged 60 years, resident of Pedapattapupalem H/o Chennayapalem village, Kavali Mandal and Nellore District into custody and hand over him to the Superintendent of Central Prison, Nellore immediately.

9. The Superintendent of Central Prison, Nellore is requested to take over the detenu into his custody and lodge him for a period of three months from the date of taking into custody as per sub-section (2) of Section 3 of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic offenders and Land Grabbers Act, 1986 (Act No.1 of 1986)

(Given under my hand and the seal this day the 20th day of March, Two thousand and six)

sd/-

(M. RAVICHANDRA)

COLLECTOR & DISTRICT MAGISTRATE NELLORE

It is the common case of both the petitioner as well as the State that the above mentioned Pralayakaveri Narasimham was detained on the ground that he is a 'goonda' as defined under Section 2(g) of the Andhra Pradesh Prevention of Dangerous Activities of Bottleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred to as 'the Act').

The learned counsel for the petitioner argues that the grounds of detention served on the detenu referr to five offences alleged to have been committed by the detenu on various dates. One of them being Crime No. 118 of 2005 of Kavali Rural Police

Station, is for an offence under Section 5 of the Explosive and Substances Act. Therefore, the involvement in such offences, even if found true, would not bring the detenu within the meaning of expression 'goonda' as defined under the Act. The learned counsel for the petitioner further submits that it is settled law that in the matters of preventive detention even one irrelevant consideration or ground, would vitiate the order of preventive detention.

The expression 'goonda' is defined under Section 2 (g) of the Act and it is reads as follows:-

> "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable sunder Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code."

From the above definition, it is clear that either he must have been by himself, or as a member of the group, which habitually commits or attempts to commit, or abets to commit commission of an offence punishable under Chapters XVI, XVII and XXII of the Indian Penal Code. An offence, under Section 5 of the Explosive Substances Act, is not an offence falling under any one of the abovementioned three Chapters of the Indian Penal Code. Therefore, the involvement of the detenu, even if it is established in Crime No. 118 of 2005, cannot be used for the purpose of classifying him as a goonda for the purpose of Section 2 (g) of the Act.

As rightly pointed out by the learned counsel for the petitioner that even one irrelevant consideration or ground, would vitiate the order of preventive detention.

The Supreme Court has repeatedly held that even one irrelevant ground, relied upon by the authority, would vitiate the order of preventive detention. We, therefore, have no option, but to allow the writ petition and quash the order of detention.

The writ petition is accordingly allowed. No costs.

_____

J.Chelameswar, J

D.Appa Rao, J

13th June 2006.

vp